

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-145706-13

Date:

May 02, 2014

In Re:

### Legend

Grantor

Child 1

Child 2

Child 3

Child 4

Date 1

Date 2

Trust A

Trust 1

Trust 2

Trust 3

Trust 4

Corporate Trustee

Individual

State

Foundation

Dear :

This letter responds to your authorized representative's letter dated November 1, 2013, requesting rulings under §§ 2041 and 2514 of the Internal Revenue Code.

The facts submitted and representations made are as follows:

On Date 1, Grantor created an irrevocable trust (Trust A) that created separate trusts for the benefit of each of Grantor's four children. Trust 1, Trust 2, Trust 3, and Trust 4 were created, respectively, for the benefit of Child 1, Child 2, Child 3, and Child 4 (Children's Trusts). State law governs all questions relating to the management, administration, investment distribution, and duration of the Children's Trusts.

Pursuant to the terms of Trust A, each of the Children's Trusts has three initial trustees, the investment trustee, the administrative trustee, and the distribution trustee. All three trustees must serve at all times. Grantor is the initial investment trustee. Corporate Trustee, an unrelated corporate trust company, is the administrative trustee.

The property of each of the Children's Trusts is held by Corporate Trustee. Distributions of trust property are made by Corporate Trustee but only at the direction of the distribution trustee. Prior to Date 2, an independent person, who is not a current beneficiary or a related or subordinate party within the meaning of § 672 serves as the sole distribution trustee of each of the Children's Trusts. Individual is currently serving as the independent distribution trustee. On or after Date 2, when the named beneficiary of the respective Children's Trust attains the age of 30, the named beneficiary may serve as the distribution trustee in conjunction with the independent distribution trustee. On or after Date 2, when the named beneficiary attains the age of 40, the named beneficiary may serve as the sole distribution trustee.

Pursuant to the terms of Trust A, distributions of trust property from the Children's Trusts and the administration of the Children's Trusts are subject to the review of an Approval Committee. The Approval Committee is comprised of Child 1, Child 2, Child 3, and Child 4. Approval Committee members are not fiduciaries, but may not act capriciously, maliciously, or fraudulently. If any child of Grantor ceases to be a member of the Approval Committee, no replacement of that member is to be named and the remaining children will continue to act as the sole members of the Approval Committee. The Approval Committee will terminate at such time that no child of Grantor is serving.

Under the terms of Trust A, the distribution trustee holds the following powers, subject to Approval Committee consent, with respect to the Children's Trusts:

(1) Power to Amend. Prior to Date 2, with the unanimous consent of the Approval Committee, the independent distribution trustee may (a) amend the [Trust A] instrument, any designation filed by any officeholder or any declaration filed by any beneficiary, and (b) invalidate or override any such designation or declaration or failure to designate or declare. Article 5.02(c)(2).

(2) Overriding Power of Appointment. Prior to Date 2, with the unanimous consent of the Approval Committee, the independent distribution trustee may (a) distribute the trust property to or for the benefit of such one or more persons or organizations (including Children 1 through 4), as the independent distribution trustee determines in his discretion, and (b) exercise any power granted to the Approval Committee elsewhere in the Trust A Instrument. Article 5.02(c)(3).

(3) Lifetime Distributions to Trust Beneficiaries. During the child's life, the administrative trustee is to pay to the child so much or all of the income and principal as

the distribution trustee decides is advisable, with the consent of the Approval Committee. After giving priority to payments to the child, during the child's life, the administrative trustee is to pay to one or more of the child's descendants so much or all of the income and principal as the distribution trustee decides is advisable, with the consent of the Approval Committee. For purposes of this paragraph, consent of the Approval Committee means 50 percent vote if three (3) or more members are acting, or unanimous vote if two (2) or fewer members are acting. Article 2.01.

Under the terms of Trust A, the Approval Committee has, at all times, the following powers, with respect to the Children's Trusts:

(4)(a) Testamentary Distributions – Nongeneral Power of Appointment. At the death of the named beneficiary, the named beneficiary has a nongeneral power of appointment over the remaining property of his or her respective trust. The Approval Committee acting by majority vote may override the primary beneficiary's exercise of his or her power of appointment in favor of the primary beneficiary's surviving spouse in whole or in part by notice thereof delivered to each trustee and the spouse within nine months after the child's death. The Approval Committee acting by unanimous vote may override in whole or in part the primary beneficiary's exercise of his or her power of appointment for the benefit of any entity or person other than the primary beneficiary's surviving spouse for any reason considering only whatever circumstances it determines appropriate by notice thereof delivered to each trustee and appointee within nine months after the child's death. Articles 2.01(c) and 4.03.

(4)(b) Testamentary Distributions – Default Allocations at Death. On the primary beneficiary's death, the administrative trustee shall allocate any trust property not disposed of by the primary beneficiary's nongeneral power of appointment *per stirpes* among the named beneficiary's then living descendants, or if none, *per stirpes* among Grantor's living descendants. If the primary beneficiary fails to exercise his or her power of appointment in whole or in part, or to the extent the Approval Committee overrides the primary beneficiary's exercise of a power of appointment, the Approval Committee acting by majority vote may override the default allocation at the primary beneficiary's death by allocating the trust property among such one or more of Grantor's descendants in such proportions as the Approval Committee decides acting by majority vote by notice thereof delivered to each trustee and descendant of Grantor within nine months after the primary beneficiary's death. Articles 2.01(d) and 4.03.

(5) Termination Event. The independent distribution trustee, if any, shall determine if a Termination Event has occurred with respect to a primary beneficiary. However, the Approval Committee acting by majority vote may negate the independent distribution trustee's determination that a Termination Event has occurred. The Approval Committee, by 50 percent vote if three (3) members are acting, or unanimous vote if two (2) or fewer members are acting, separately may determine that a Termination Event has occurred with respect to a primary beneficiary. Article 2.03(a).

(6) Minimization Powers after Termination. Unless the Approval Committee acting by majority vote provides otherwise, or the Approval Committee acting by a 50 percent vote separately invokes a minimization power defined below, following the occurrence of a termination event with respect to a primary beneficiary and until such primary beneficiary's Trust Early Termination Date, the independent distribution trustee, if any, shall reduce such primary beneficiary's benefits from the trust by exercising any one or more of the following minimization powers: (a) limit distributions to such primary beneficiary to minimal support or eliminate distributions entirely; (b) restrict, limit, or eliminate the provisions of primary beneficiary's special power of appointment; (c) deem the primary beneficiary deceased for the purpose of acting as or appointing any officeholder under any trust hereunder (except that a child of Grantor may not be removed from the Approval Committee); and (d) deem the primary beneficiary deceased for all purposes of Article 2.01, except Article 2.01(d) (allocations at death). Article 2.03(b).

(7) Distribution upon Trust Early Termination Date. Upon a primary beneficiary's Trust Early Termination Date, the Approval Committee can exercise its overriding power of appointment to distribute so much or all of the trust property of the trust named for the primary beneficiary to or for the benefit of one or more of Grantor's descendants and Foundation, in such proportions as the Approval Committee directs prior to the Early Termination Date. If the Approval Committee does not act by the Early Termination Date, the default allocation is 50 percent among the named beneficiary's living descendants *per stripes*, or if none, *per stirpes* among Grantor's living descendants, and 50 percent to Foundation. Article 2.03(c).

#### RULINGS REQUESTED:

- (1) While more than one of Grantor's children are acting on the Approval Committee, none of the committee powers will be considered a general power of appointment under § 2041
- (2) While more than one of Grantor's children are acting on the Approval Committee, none of the committee powers will be considered a general power of appointment under § 2514

#### Ruling 1

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942,

or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038 inclusive.

Section 2041(b)(1) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides, in part, that the term "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a decedent to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust is a power of appointment.

Section 20.2041-1(c)(1) provides, in part, that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of the estate.

Section 2041(b)(1)(C)(ii) provides, in part, that in the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person -- if the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property subject to the power, which is adverse to exercise of the power in favor of the decedent -- such power shall not be deemed a general power of appointment. For purposes of § 2041(b)(1)(C)(ii), a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

Section 20.2041-3(c)(2) provides, in part, that an interest adverse to the exercise of a power is considered as substantial if its value in relation to the total value of the property subject to the power is not insignificant. A taker in default of appointment under a power has an interest which is adverse to an exercise of the power. A co-holder of the power has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a co-holder of a power is considered as having an adverse interest where he may possess the power after the decedent's death and may exercise it at that time in

favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y.

In this case, the Approval Committee is composed of only Grantor's four children. With respect to each of the Children's Trusts, the Approval Committee has broad powers to amend the trust, to alter distributions made by the distribution trustee, and to make distributions from the trusts. While the Approval Committee is acting, no funds can be distributed from any trust without the Approval Committee's consent.

We conclude, therefore, that the members of the Approval Committee have interests that are adverse to the other members. Because every distribution is subject to Approval Committee consent, including the default allocations provided under the terms of Trust A, the Approval Committee is empowered to prevent all distributions from all of Children's Trusts 1 through 4. After Date 2, the Approval Committee has a jointly-held overriding power of appointment to appoint to any person or organization, including themselves. On the death of one child of Grantor, the power will pass jointly to the surviving three children of Grantor. Thus, as in the example in § 20.2041-3(c)(2), the surviving three children are considered to have interests adverse to the exercise of the power of the deceased child.

Accordingly, based on the facts submitted and the representations made, we conclude that while more than one of Grantor's children are acting on the Approval Committee, none of the committee powers will be considered a general power of appointment under § 2041.

## Ruling 2

Section 2501(a)(1) provides for the imposition of a gift tax on the transfer of property by gift. Section 2511(a) provides that the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

Section 2514(c) provides that the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (possessor), the possessor's estate, the possessor's creditors, or the creditors of the possessor's estate.

Section [25.2514-1\(b\)\(1\)](#) of the Gift Tax Regulations provides, in part, that the term “power of appointment” includes all powers which are in substance and effect powers of appointment received by the donee of the power from another person, regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a donee to affect the beneficial enjoyment of a trust property or its income by altering, amending or revoking the trust instrument or terminating the trust is a power of appointment.

Section [25.2514-1\(c\)\(1\)](#) provides, in part, that a power of appointment is not a general power if by its terms it is exercisable only in favor of one or more designated persons or classes other than the possessor or his creditors, or the possessor’s estate or the creditors of the estate.

Section [2514\(c\)\(3\)\(B\)](#) provides, that in the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person -- if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest in the property subject to the power, which is adverse to the exercise of the power in favor of the possessor -- such power shall not be deemed a general power of appointment. For purposes of § 2514(c)(3)(b), a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor’s power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor’s power.

Section [25.2514-3\(b\)\(2\)](#) provides, in part, that an interest adverse to the exercise of a power is considered as substantial if its value in relation to the total value of the property subject to the power is not insignificant. A taker in default of appointment under a power has an interest which is adverse to an exercise of the power. A co-holder of a power of appointment has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a co-holder of a power is considered as having an adverse interest where he may possess the power after the possessor’s death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y’s death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y.



In this case, the Approval Committee is composed of only Grantor's four children. With respect to each of the Children's Trusts, the Approval Committee has broad powers to amend the trust, to alter distributions made by the distribution trustee, and to make distributions from the trusts. While the Approval Committee is acting, no funds can be distributed from any trust without the Approval Committee's consent.

We conclude, therefore, that the members of the Approval Committee have interests that are adverse to the other members. Because every distribution is subject to Approval Committee consent, including the default allocations provided under the terms of Trust A, the Approval Committee is empowered to prevent all distributions from all of Children's Trusts 1 through 4. After Date 2, the Approval Committee has a jointly-held overriding power of appointment to appoint to any person or organization, including themselves. On the death of one child of Grantor, the power will pass jointly to the surviving three children of Grantor. Thus, as in the example in § 25.2514-3(b)(2) the surviving three children are considered to have interests adverse to the exercise of the power of the deceased child.

Accordingly, based on the facts submitted and the representations made, we conclude that while more than one of Grantor's children are acting on the Approval Committee, none of the committee powers will be considered a general power of appointment under § 2514.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representative.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion on the trust provisions that permit the distribution trustee to distribute income or principal to trustees of other qualified trusts (decanting). We also express no opinion on the tax consequences of Trust A or any beneficiary if the language of Trust A is amended.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.



This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures:

Copy for § 6110 purposes  
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cc: